

**Recommendation for Council Action – Backup  
Floodplain Variance Request – 1000 N. Lamar**

**SUMMARY OF FINDINGS:**

1. THE DEVELOPMENT WILL CAUSE ADVERSE FLOODING ON OTHER PROPERTY. The development will cause increases in flood depths of up to 0.01 feet in 100-year water surface elevations within the project area and extending approximately 153 feet upstream. These increases in flood depths will affect both City-owned and private property.
2. NO SAFE ACCESS. The proposed building has multiple points of access to and from the building, all of which are located in the 100-year floodplain. Of these access points, the stair well exit located on the southwest corner of the building that exits in on to 10th Street has smallest flood depths of 6.7 feet during 25-year event and 8.2 feet during the 100-year event. First responder personnel and building occupants do not have safe access to and from the building during a flood event.
3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The development increases the opportunity for occupancy in the floodplain by increasing the conditioned area on the property. The development significantly increases the conditioned space from the existing automotive service station use to the proposed commercial use.
4. PROPOSED PARKING DOES NOT MEET CODE REQUIREMENTS. The proposed parking area associated with the building is within both the 25-year and 100-year floodplains. The maximum depth of flooding in the proposed parking lot is approximately 7.7 feet in a 25-year flood event and 9.2 feet in a 100-year flood event.
5. PROPOSED FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed building will have its finished floor elevation above the City of Austin minimum elevation requirements, which require the finished floor elevation to be at least one foot above the 100-year floodplain elevation. The finished floor elevation of the first floor of the proposed building is 13.4 feet above the 100-year floodplain. However, all portions of the building below the first floor, which consists of two levels of parking and mechanical equipment, will be inundated to a depth of up to 9.2 feet in the 100-year floodplain.
6. HARDSHIP CONDITIONS FOR THE PROPERTY PARTIALLY EXIST. The safe access rule presents a hardship for this site since safe access for the property cannot be achieved without a direct connection to Baylor Street through the adjacent property immediately to the west. However, there is not a hardship as defined in the Building Code for the parking area in the floodplain.

**APPLICABLE CODE AND VARIANCES REQUESTED**

- I. LDC Section 25-7-61 Criteria for Approval of Plats, Construction Plans, and Site Plans states that a final plat, subdivision construction plan, or site plan may not be approved unless the proposed development will not result in additional identifiable adverse flooding on other property.

***VARIANCE REQUESTED:*** *The applicant requests a variance to allow the development to be constructed in a manner that causes adverse flooding impacts to other properties.*

- II. LDC Section 25-12-3 Local Amendments to the Building Code, Appendix G Flood-Resistant Construction, G103.4 Activities in riverine flood hazard areas states that the building official shall not permit any new construction, substantial improvement or other development, including fill, unless the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the design flood elevation at any point that results in additional adverse flooding on other property.

***VARIANCE REQUESTED:*** *This variance is due to the fact that the development causes increases in the level of the design flood that result in additional adverse flooding on other property.*

- III. LDC Section 25-12-3 Local Amendments to the Building Code, Appendix G Flood-Resistant Construction, G103.5 Floodway Encroachment states that prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing activity, the building official shall require submission of a certification by a Professional Engineer licensed by the State of Texas, along with supporting technical data in accordance with the City of Austin Drainage Criteria Manual, that demonstrates that such development will not cause any increase of the level of the design flood.

***VARIANCE REQUESTED:*** *This variance is due to the fact that the development causes increases in the level of the design flood.*

- IV. LDC Section 25-12-3 Local Amendments to the Building Code, Appendix G Flood-Resistant Construction, G103.5.1 Floodway revisions states that a floodway encroachment that increases the level of the design flood may be considered for a variance only if the applicant has applied for a conditional Flood Insurance Rate Map (FIRM) revision and has received the approval of the Federal Emergency Management Agency (FEMA).

***VARIANCE REQUESTED:*** *This variance is due to the fact that the development encroaches into the floodway, causes increases in the level of the design flood, and the applicant has not applied for or received approval of the conditional revision from FEMA.*

- V. LDC Section 25-12-3, (Local Amendments to the Building Code), Section 1612.4.3 Means of Egress provides that normal access to a building shall be by direct connection with an area that is a minimum of one foot above the design flood elevation.

***VARIANCE REQUESTED:*** *The applicant requests a variance to Building Code Section 1612.4.3, to allow a commercial building to be constructed without normal access, either vehicular or pedestrian, to an area that is a minimum of one foot above the design flood elevation. The entire lot is in the 100-year floodplain. The proposed building has multiple points of access to and from the building, all of which are located in the 100-year floodplain. The approximate depth*

of floodwater at the 10<sup>th</sup> Street exit is 6.7 feet during 25-year event and 8.2 feet during the 100-year event.

- VI. LDC Section 25-12-3, (Local Amendments to the Building Code), Section G102.3 Nonconforming Uses prohibits expanding, changing, enlarging, or altering the use of a premises in a way which increases its nonconformity.

**VARIANCE REQUESTED:** *The applicant requests a variance to Building Code Section G102.3 to allow developing the property in a manner that increases flood heights and also enlarges the total conditioned area on the property that does not have safe access out of the floodplain.*

- VII. LDC Section 25-7-152 Dedication of Easements and Rights-of-Way requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

**VARIANCE REQUESTED:** *The applicant requests a variance to exclude the footprint of the proposed building from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- VIII. LDC Section 25-7-92 (A) and (B) Encroachment on Floodplain Prohibited prohibits encroachment of a building and parking area on the 25-year and 100-year floodplains.

**VARIANCE REQUESTED:** *The applicant requests a variance to allow placement of a building and associated parking within the 25-year and 100-year floodplains of Shoal Creek.*

## **PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:**

Per LDC Section 25-12-3, Technical Codes, Section G105.7 Variances, variances shall only be issued upon consideration of the following prerequisites:

### **PREREQUISITE**

- 1) A technical showing of good and sufficient cause based on the unique characteristics of the size, configuration or topography of the site.

*Insufficient causes for issuing a variance may include the following:*

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*

### **FINDING**

- 1) **CONDITION IS NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies the proposed development, which will increase parking with significant flood risk and increase density on this property where there is no safe access out of the floodplain.

- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

2) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.

*The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.*

3) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or ordinances.

4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

*Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:*

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on property.*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

2) **CONDITION IS MET.** Other than the possibility of minor renovation of the existing automotive service building on the site, the property cannot be redeveloped without a variance to the safe access provisions of the code.

3) **CONDITION IS NOT MET.** The proposed development does increase flood heights. The development does increase public safety threat because more occupants could be located in a building without safe access for the occupants and first responders.

4) **CONDITION IS NOT MET.** Redevelopment of the site to increase the density within the floodplain with significant flood risk in the parking area is not considered minimum necessary to afford relief.

5) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

5) **CONDITION IS MET.** The finished floor elevation of the proposed building will be 13.4 feet above the 100-year floodplain elevation.